

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARK MARING, et al.,

Plaintiffs,

v.

PG ALASKA CRAB INVESTMENT CO.,  
LLC, et al.,

Defendants.

CASE NO. C05-326JLR

ORDER

This matter comes before the court on a motion for summary judgment from Defendants James Paduano and Charles Greenberg (Dkt. # 86), a motion to amend the pleadings from Plaintiffs (Dkt. # 102), and a motion to compel discovery from Plaintiffs (Dkt. # 104). All motions revolve around Plaintiffs' efforts to ensure that Mr. Greenberg and Mr. Paduano remain potentially liable to them.

The court has summarized the facts underlying this action in several prior orders, and will not repeat the summary here.

This is a claim for breach of contract. The contracting Defendant is PG Alaska Crab Investment Company ("PG Alaska"), a limited liability company. In both their

1 motion to amend the pleadings<sup>1</sup> and their opposition to the instant summary judgment  
2 motion, Plaintiffs attempt to recast their claim as one for fraud against Mr. Greenberg and  
3 Mr. Paduano, the two principal shareholders of PG Alaska.

4         The court finds Plaintiffs' efforts unavailing. In their attempts to state a claim for  
5 "promissory fraud," Plaintiffs do nothing more than assert that Mr. Greenberg and Mr.  
6 Paduano had personal involvement in deciding how to interpret the contract between the  
7 parties and how PG Alaska would perform on that contract. This is to be expected, as a  
8 corporation can only act through its officers. Plaintiffs' allegations amount to a claim  
9 that whenever the individuals responsible for a company's performance under a contract  
10 interpret their performance obligations differently than the other party to the contract, the  
11 officers of the company are liable for fraud. Plaintiffs have no authority that supports this  
12 assertion.  
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14         Despite Plaintiffs' fruitless effort to state a fraud claim, however, Mr. Greenberg  
15 and Mr. Paduano are not immune from potential liability. Plaintiffs may be able to pierce  
16 the PG Alaska corporate veil.<sup>2</sup> The court is convinced that the evidence of record, in  
17 addition to evidence that may have been acquired in recent depositions of Mr. Greenberg  
18 and Mr. Paduano, could potentially support a claim that Mr. Greenberg and Mr. Paduano  
19 are the alter ego of PG Alaska. The court takes no view on the merits of that claim, but  
20 finds that Plaintiffs may, at trial, be able to demonstrate that Mr. Greenberg and Mr.  
21 Paduano are personally liable for any judgment against PG Alaska. Thus, while the court  
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24         <sup>1</sup>As Defendants correctly note, Plaintiffs' motion to amend is grossly untimely. Putting  
25 aside the legal merits of the motion, the court finds no justification for filing this motion so late.  
26 Trial in this action is only three months away.

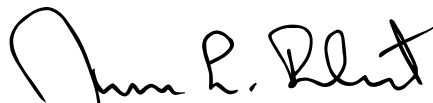
27         <sup>2</sup>In considering Plaintiffs' piercing theory, the court has applied Washington law as set  
28 forth in Defendants' motion for summary judgment. The court need not decide here if  
Washington law applies.

1 finds it unnecessary to permit an amendment of the pleadings to expressly add “piercing”  
2 allegations,<sup>3</sup> it will permit the Plaintiffs to pursue a piercing theory of liability.

3 The court turns finally to Plaintiffs’ motion to compel, in which they seek  
4 discovery relevant to their piercing theory. Plaintiffs claim that Defendants have  
5 provided inadequate responses to three requests for production of documents. The court  
6 has reviewed the documents, and concludes that they seek documents that are relevant to  
7 Plaintiffs’ effort to pierce the PG Alaska corporate veil. Defendants shall provide all  
8 documents responsive to these requests within two weeks of this order.  
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10 As set forth in this order, the court grants Defendants’ motion for summary  
11 judgment as to all theories of liability except piercing the corporate veil. The court  
12 therefore GRANTS the motion (Dkt. # 86) in part, and DENIES it in part, and notes that  
13 Mr. Paduano and Mr. Greenberg remain as Defendants in this action. The court DENIES  
14 Plaintiffs’ motion to amend the complaint (Dkt. # 102). The court GRANTS Plaintiffs’  
15 motion to compel (Dkt. # 104).  
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17 Dated this 25th day of April, 2006.

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20 JAMES L. ROBERT  
21 United States District Judge  
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25 <sup>3</sup>Plaintiffs’ complaint repeatedly asserts that Mr. Greenberg and Mr. Paduano controlled  
26 PG Alaska, and that they are liable under the contract-in-suit. This is sufficient in a liberal  
27 pleading regime to put the individual Defendants on notice that they faced indirect or vicarious  
28 liability. Even if Plaintiffs were required to amend their pleadings, the court would grant leave to  
amend absent a much stronger demonstration of prejudice. See Holley v. Crank, 400 F.3d 667,  
675 (9th Cir. 2005).